

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Fitchburg Gas and Electric Light Company for)	
approval of its 2002 Electric Reconciliation Mechanism)	D.T.E. 02-84
and Transition Charge Reconciliation Filing)	
)	

**ATTORNEY GENERAL’S OPPOSITION
TO FITCHBURG GAS AND ELECTRIC LIGHT
COMPANY’S MOTION TO ADMIT POST-HEARING EVIDENCE**

Fitchburg Gas and Electric Light Company (“Fitchburg” or the “Company”) has filed a motion (“Motion”) seeking to admit into evidence certain unsupported supplemental schedules (“Supplemental Schedules”) following the close of hearings. The Department of Telecommunications and Energy (“Department”) should deny the Motion because the Company has failed to establish good cause for late admission into evidence of the Supplemental Schedules. The Company had ample notice of the issue and opportunity to present evidence during the hearing. The Supplemental Schedules are not supported by sworn testimony and were not subjected to cross examination. Admission at this time would be prejudicial. In addition, the information is immaterial and unlikely to significantly impact the Department’s decision.

I. BACKGROUND

On December 20, 2002, Fitchburg filed a petition with the Department seeking approval of its 2002 Electric Reconciliation Mechanism and Transition Charge Reconciliation Filing (“Filing”). During the evidentiary hearing, which was held on April 7, 2003, the Attorney General cross-examined the Company’s panel of witnesses regarding a \$450,000 discrepancy in favor of the G-3 class in the projected 2003 transition charge revenues. After reviewing this figure during an off-the-record break, the Company’s witnesses agreed on the record that the projected \$450,000 discrepancy figure was correct. Tr. pp. 32-33.

On April 9, two days after the close of the hearing, the Company claimed in the Motion that it had recently discovered errors in the original schedules used in calculating the projected \$450,000 discrepancy, and sought to revise those schedules with the allegedly corrected Supplemental Schedules.¹ The Company’s proposed correction would reduce the projected \$450,000 discrepancy to approximately \$67,000.

¹ The Company claims that it discovered the errors only upon returning to its offices after the close of hearings. Motion, pp. 2-3.

II. STANDARD OF REVIEW

The Department's rules provide that "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." 220 C.M.R. § 1.11(8). Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. *Blackstone Gas Company*, DTE 01-50 at 14 (2001) citing *Machise v. New England Telephone and Telegraph Company*, D.P.U. 87-AD-12-B at 4-7 (1990); *Boston Gas Company*, D.P.U. 88-67(Phase II) at 7 (1989); *Tennessee Gas Pipeline Company*, D.P.U. 85-207-A at 11-12 (1986).²

III. ARGUMENT

A. The Company has not shown good cause to reopen the record. Fitchburg had prior notice of the G-3 discrepancy and ample opportunity to present evidence, yet failed to do so at the proper time.

The Company had two separate opportunities to review and verify the information in the original schedules regarding the \$450,000 discrepancy. The Company and the Attorney General engaged in settlement discussions in the week prior to the evidentiary hearing. Tr. pp. 12, 34.³ The Attorney General raised the \$450,000 discrepancy issue with the Company. The Company should have reviewed its schedules then to investigate the discrepancy but evidently failed to do so. Then, on cross examination, the Attorney General asked whether the \$450,000 discrepancy figure was correct, affording the Company a second opportunity to verify its figure. Both Company witnesses, Mark Collin and Karen Asbury, performed the calculations from the schedules and confirmed the accuracy of the Attorney General's figure. Tr. pp. 32-33. The Company did not express any timely reservations or concerns about the \$450,000 figure or the underlying data from which it is derived and calculated.⁴ *Id.* at 32-33.

²Department "case law on late-filed exhibits is based upon the premise that late-filed exhibits are prejudicial because other parties do not have the opportunity to conduct cross-examination regarding information contained in late-filed exhibits in order to test the accuracy of the data through the litigation process." *New England Telephone and Telegraph Company*, d/b/a/ NYNEX, D.P.U. 94-50 at 62 (1995). Hence, only in limited circumstances has the Department found good cause to permit the submission of evidentiary documents into evidence following the close of evidentiary hearings. See *Payphone Inc.*, D.P.U. 90-171, p. 4-5 (1991) (fundamentally unfair to admit evidence not subject to cross examination).

³ As a result of these settlement discussions, the Company voluntarily revised Schedule MHC-7 to reflect updated 2002 data. It could have revised other schedules then.

⁴ After admitting the magnitude of the discrepancy at the hearing, the Company's witnesses focused on the underlying load factor for the G-3 class and now state that this figure "seemed too high." Motion, pp. 2-3. The Company's post-hearing focus on load factor instead of discrepancy does not

Because the Company failed to submit the Supplemental Schedules during the hearing, they are unsupported by sworn testimony and were not subjected to cross examination. Admission at this late date would be prejudicial. *New England Telephone and Telegraph Company*, d/b/a/ NYNEX, D.P.U. 94-50 at 62 (1995); *Payphone Inc.*, D.P.U. 90-171, p. 4-5 (1991). The Department has repeatedly reminded the Company of the need to present evidence in a timely and non-prejudicial fashion. *Fitchburg Gas and Electric Light Company*, D.T.E. 98-51, p. 9 (1998); *Fitchburg Gas and Electric Light Company*, D.T.E. 02-24/25, p. 12 (2002). The Supplemental Schedules are “outside of the category of updates that are routinely accepted by the Department after the close of evidentiary hearings.” *Fitchburg Gas and Electric Light Company*, D.T.E. 02-24/25, p. 12 (2002). The Department should reject the Company’s efforts at this late juncture---indeed, its third opportunity---to alter the schedules used in calculating the projected discrepancy.

B. The Department should reject the Motion because this information is not needed for the Department’s decision in this case.

The data at issue are projections, merely an idea of what may happen in 2003. The 2003 figures will change when actual data are known. The Department should reject the Company’s request to admit newly revised projections because the 2003 discrepancy issue is one that will be dealt with in the 2003 reconciliation, not in its decision in this case.

IV. CONCLUSION

For these reasons, the Company has not shown good cause for admitting the Supplemental Schedules into evidence. The Department should deny the Company’s Motion.

Very truly yours,

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justify late-filing of evidence on the discrepancy. The Company knew or should have known at the hearing that the projected G-3 load factor would be high if the discrepancy was high because the underlying load factor data and the calculated discrepancy are directly related.